

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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GEORGE OTIBU, :  
: Petitioner, :  
: :  
: -against- :  
: :  
UNITED STATES OF AMERICA, :  
: :  
: Respondent. :  
- - - - - X

02 Cr. 104 (JFK)  
OPINION and ORDER

APPEARANCES:

Petitioner,

GEORGE OTIBU, pro se  
52383-054  
FCI Loretto  
P.O. Box 1000  
Loretto, PA 15940

For the Respondent,

DAVID N. KELLEY,  
United States Attorney,  
Southern District of New York  
One Saint Andrew's Plaza  
New York, New York 10007  
Of Counsel: AUSA Marcus Asner

JOHN F. KEENAN, United States District Judge

**JOHN F. KEENAN, United States District Judge**

**PRELIMINARY STATEMENT**

Before the Court is Petitioner George Otibu's ("Otibu") pro se petition for early deportation pursuant to Section 241(a) of the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(4)(B). For the reasons stated herein, the petition is dismissed.

**BACKGROUND**

On January 4, 2002, Otibu and a co-defendant were arrested after delivering a kilogram of heroin to an individual cooperating with the Government. On June 27, 2002, the Government filed Superseding information S2 02 Cr. 104 charging Otibu with one count of conspiracy to distribute one kilogram and more of heroin, in violation of 21 U.S.C. § 846, and one count of possession with intent to distribute and distribution of one kilogram and more of heroin, in violation of 21 U.S.C. §§ 812, 841(a)(1) and 841(b)(1)(A). Pursuant to a cooperation agreement with the Government, Otibu pleaded guilty to both counts before Judge Allen G. Schwartz on June 27, 2002.

On January 6, 2004, Otibu appeared before me for sentencing.<sup>1</sup> As provided by the Sentencing Guidelines, I

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<sup>1</sup> This case was transferred to me after the death of Judge Schwartz in late 2003.

calculated Otibu's total offense level at 35 and his Criminal History Category at I. (Sentencing Tr. at 7). The Guidelines indicated a sentence of 168 to 210 months. (Id. at 8). Pursuant to a §5K1.1 motion by the Government and 18 USC § 3553(e), I sentenced Otibu below the Guidelines range and the statutory minimum to two concurrent sentences of 72 months' imprisonment followed by 5 years' supervised release. (Id. at 16).

#### **THE INSTANT MOTION**

On April 1, 2004, Otibu filed his pro se letter seeking early deportation pursuant to Section 241(a) of the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(4)(B). Otibu's letter asserts that he is a national of Ghana convicted of a nonviolent offense, and thus entitled to early deportation. The Government opposes the petition on the grounds that early deportation is available only at the discretion of the Attorney General, the exercise of which lies outside the Court's jurisdiction.

#### **DISCUSSION**

8 U.S.C. § 1231(a)(4)(A) prohibits the Attorney General from deporting an alien sentenced to prison until he is released. Subsection B creates an exception authorizing early deportation if the Attorney General determines that "(I) the alien is confined pursuant to a final conviction for a nonviolent offense . . . and (II) the removal of the alien is appropriate and in the

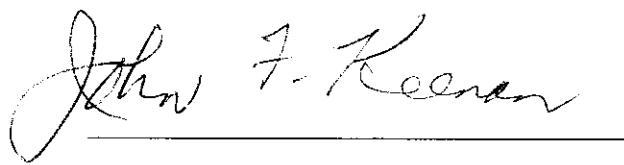
best interest of the United States." This determination "is a matter solely within the discretion of the Attorney General," Thye v. U.S., 109 F.3d 127, 129 (2d Cir. 1997), and is not subject to compulsion through a private cause of action. See 8 USC § 1231(a)(4)(D). The Attorney General has not determined that Otibu's early deportation is appropriate. Because the Court lacks jurisdiction to review this decision, see 8 U.S.C.A. § 1252(a)(2)(B)(ii), the petition must be dismissed.

#### CONCLUSION

Otibu's petition for early deportation pursuant to Section 241(a) of the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(4)(B), is dismissed.

SO ORDERED.

Dated: New York, New York  
July 27, 2005



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JOHN F. KEENAN  
United States District Judge